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WHITE *v.* HALL et al.

March 14, 1912.

[74 S. E. 212.]

1. Evidence (§ 385*)—Parol Evidence—Admissibility.—Parol evidence is inadmissible to vary a written instrument.

[Ed. Note.—For other cases, see Evidence, Cent. Dig. §§ 1757, 1758; Dec. Dig. § 385.* 10 Va.-W. Va. Enc. Dig. 646.]

2. Reformation of Instruments (§ 16*)—Grounds.—An instrument, signed by a party without fraud or mistake, and with an understanding of the language and purport of the instrument, cannot be reformed because of a contemporaneous oral promise which has not been kept.

[Ed. Note.—For other cases, see Reformation of Instruments, Cent. Dig. § 68; Dec. Dig. § 16.* 11 Va.-W. Va. Enc. Dig. 905.]

3. Trusts (§§ 289, 308, 311*)—Obligation of Trustee—Account.—Land was conveyed to a trustee for the use of a beneficiary. Each contributed a half of the partial payment made, and the balance of the price was paid by the trustee individually. The purchase was made in contemplation of the formation of a corporation of which the parties became stockholders and officers. The corporation, with the knowledge of the beneficiary, took timber from the premises, and during the life of the corporation the beneficiary drew on it for support of himself and family. A third person loaned money to the corporation, secured by a conveyance of the land executed by the trustee and the beneficiary, the whole of which was paid off by the trustee; the lender reconveying to the trustee. The corporation subsequently became indebted to another creditor, and the trustee and his wife conveyed the land to such creditor. The beneficiary never offered to pay any part of the deferred installments of purchase money; nor did he assert any claim against the trustee for rents and profits, or for timber cut by the corporation. Held, that the trustee must render an account and be charged with the receipts from the sale of timber, and with rents and profits, and credited with a half of the cash payment of the partial payment and with the amount of the deferred installments of the purchase price, the amount expended for improvements, and half the amount advanced to pay off the discharged deed of trust.

[Ed. Note.—For other cases, see Trusts, Cent. Dig. §§ 408, 428, 430; Dec. Dig. §§ 289, 308, 311.* 13 Va.-W. Va. Enc. Dig. 354.]

4. Trusts (§ 184*)—Management of Trust Estate—Permanent Improvements Made by Trustee.—A trustee invested with the control of property, and not expressly or impliedly prohibited from incur-

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

ring expenses for improvements, may make improvements and, on a settlement of his account, receive credit therefor.

[Ed. Note.—For other cases, see Trusts, Cent. Dig. § 238; Dec. Dig. § 184.* 13 Va.-W. Va. Enc. Dig. 358.]

Appeal from Circuit Court, Buckingham County.

Suit by W. E. Hall against H. M. White and others. From a decree granting relief, defendant named appeals. Reversed and remanded.

A. L. Holladay and *A. B. Dickinson*, for appellant.

F. C. Moon, for appellees.

SOUTHERN RY. CO. *v.* CHILDREY.

March 14, 1912.

[74 S. E. 221.]

1. Master and Servant (§ 293*)—Railroads—Safe Appliance—Duty to Provide.—In an action against a railway company for injury to a brakeman, it was error to instruct that the company was bound to use ordinary care to furnish sound and safe brakes and appliances, since it was the company's duty merely to use ordinary care to provide reasonably sound and safe brakes and appliances.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. §§ 1148-1161; Dec. Dig. § 293.* 9 Va.-W. Va. Enc. Dig. 674.]

2. Master and Servant (§ 296*)—Railroads—Injury to Brakeman—Defective Appliances—Instructions—Inspection.—In an action for injury to a railway brakeman caused by a defective appliance, an instruction that if defendant company maintained inspectors of appliances plaintiff could assume that the duty had been properly performed, etc., was erroneous as ignoring his duty to make an inspection under a rule of the company.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. §§ 1180-1194; Dec. Dig. § 296.* 9 Va.-W. Va. Enc. Dig. 683.]

3. Master and Servant (§ 235*)—Railroads—Defective Appliances—Inspection—Duty of Employee.—Maintenance by a railroad company of special inspectors of appliances does not relieve a brakeman of his duty, under a rule of the company, to make a reasonable inspection for open and obvious defects in brakes used by him.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. §§ 710-722; Dec. Dig. § 235.* 9 Va.-W. Va. Enc. Dig. 703.]

4. Master and Servant (§ 296*)—Railroads—Injury to Brakeman—Instructions.—In an action for injury to a railway brakeman caused by a defective brake, it was proper to refuse to instruct that he was bound to acquaint himself with the dangers incident to his work,

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.